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Can Liberal States Coercively Restrict the Right to Leave? Brain Drain, Migration, and Global Justice

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I. Preface: Brain Drain, Migration, and Global Justice

The purpose of this paper is, given the problems related to global justice caused by “brain drain,” to examine whether governments of poor countries are justified in tackling brain drain by restricting people’s “right to leave” from the viewpoint of liberalism.

Why focus on the right to leave? From a theoretical point of view, the reason is that, when discussing the movement of people in relation to global justice theory, in the arguments on “immigration justice,” theorists tend to focus on “immigration.” In general, “immigration justice” consists of arguments on whether people in rich countries have a duty to accept immigrants from poor countries in the context of global justice. On this point, there is a normative debate between theorists who defend “open borders” and those who advocate “immigration restrictions” (see, for example, Wellman and Cole 2011). However, compared with “immigration,” theorists have not paid enough attention to “emigration” until recently. In some cases, “emigration” also creates various problems related to global justice. This is especially noticeable with “brain drain.”

For example, since the Schengen Agreement was concluded among many European countries, people have been able to move freely within the Schengen Area. As a result, population inflow from Eastern and Southern Europe to Western Europe has raised various social problems. One of the serious issues is the outflow of highly skilled workers such as medical professionals, educators, scientists, and technical experts. The outflow of “elites” who, in a broad sense, should be the foundation for nation-building, relates to the survival of the state, so it is quite a serious matter for the sending society. However, brain drain is not just a problem for indi-

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vidual societies – the international community must tackle it as well.

Consider, for example, the outflow of health care personnel. Recently, some have pointed out the “health gap/health inequality” among developing countries and developed countries (see, for example, Marmot 2016). There is a big difference between countries in average life expectancy, morbidity rate, infant mortality rate, and other such indicators because of the disparity in the available medical treatment. The disparity may relate to the differences in medical resources and technology, but it is also due to the fact that health care workers exit developing countries, leaving them short on medical staff. This outflow of health care workers is due to the asymmetrical global economic structure, which is causing “health inequality” between wealthy countries and impoverished countries to increase. Thus the international society should work together to stem the “brain drain” and shrink the gap; this is a matter of global justice.

One way to deal with brain drain is for sending countries to stem the outflow of highly skilled individuals – that is, restricting people’s right to leave. This would not be difficult in a tyrannical state. However, even in liberal states that are committed to individual freedom and autonomy, it is possible to constrain people’s right to emigrate from a liberal point of view.¹⁾ On this issue, as an important previous study, there is a debate between two political philosophers, Gillian Brock and Michael Blake (Brock and Blake 2015).²⁾ In this paper, at first, focusing on the debate between Brock and Blake, I introduce and examine their arguments. Then I will touch on my views on how to respond to brain drain normatively.

II. Normative Arguments on Brain Drain and States’ Restriction of Emigration: Gillian Brock vs. Michael Blake

In this section, I will introduce two philosophers’ arguments. Before going into detail, I will present a brief summary of their arguments. First of all, they do not assert that the right to free movement, though it is one of the basic human rights, is an absolute right that must not be restricted at any time. Therefore, both assume that the right to exit can be restricted under some conditions. Then Brock endorses some constraints on people’s right to leave, because people (especially wealthy and talented ones) are obliged to support the “states” (socio-political institutions) to which they belong. On the other hand, for Blake, individual freedom and autonomy are ex-

1) In the first place, there is the problem of why “nation-states” have jurisdiction over people’s movement. It is not clear that states should exercise such a jurisdiction. Alex Sager criticizes this way of thinking, calling it “methodological nationalism” (see, for example, Sager 2016, 2018). For my evaluation of this argument, see Shirakawa (2018).

2) For a brief summary of their arguments, see Brock (2016) and Blake (2016).

tremely important values, so it is impermissible from a liberal point of view to treat people as if they are “resources” for their nations. Therefore, Blake is reluctant to constrain the right to emigrate. In my opinion, Blake’s arguments are more persuasive than Brock’s. Let us examine Brock’s arguments first.

1. Brock’s Arguments

According to Brock, brain drain from developing countries to developed ones is a major problem for the countries of origin from the viewpoint of justice. From a liberal perspective, it is justifiable for governments to restrict skilled workers’ right to leave. Before going into detail on why she thinks so, I want to confirm her definition of brain drain. She does not think that every case of brain drain is troublesome. In the first place, the right to leave is one of the basic human rights people should have, and it cannot be constrained without good reasons. However, we should be careful in cases where skilled individuals (for example, doctors and nurses) in developing countries seek to emigrate to developed countries for better wages and opportunities.³⁾ As for why we should be careful in such cases, Brock argues as follows, based on the works of John Rawls.

For liberal theorists, in general, what is important is that each individual can pursue her own conception of a good life. However, in order to pursue a good life, certain conditions are required; one of them is just social institutions. According to Rawls, “justice” is “the first virtue” that “the basic structure of society” or “major social institutions” should have. “Major social institutions” are “the political constitution and the principal economic and social arrangements”—in other words, the state institutions. We require a “just state” in order for each of us to pursue our “conception of a good life,” because major social institutions “define appropriate distribution of benefits and burdens of social cooperation” and “define men’s rights and duties and influence their life prospects what they can expect to do and how well they can hope to do” (Rawls 1999: 3-7). According to Brock, therefore, “the institutions that govern our lives have an important role to play in structuring our life prospects and so it is important that we ensure these aims to approximately just ones” (Brock and Blake 2015: 25).

In order for people to really pursue their conceptions of a good life, there needs to be not only a “just” state but an “effective” state. States must, at minimum, maintain order in society and be able to provide safe water and food, fundamental security, minimum education, public health services, and infrastructure such as roads and

3) She says that she does not argue that “people should be completely prohibited from migrating.” Instead, her “general position is that people should be free to move across state borders *so long as that movement satisfies a number of important conditions to be discussed*” (Brock and Blake 2015: 14-15, italics added; see also 87).

bridges. However, many states in the world, unfortunately, lack such abilities – they are often called “failed states” or “fragile states.” People in such states have difficulty in pursuing their conception of a good life. For Brock, “effective states are an essential component of enjoying a decent life in our world” (ibid.: 29).

In addition, liberalism commits to moral egalitarianism, which is the notion that “no matter where people are located on the planet, they deserve to be treated as human beings that have equal value to other human beings, *ceteris paribus*” (ibid.: 25). That is, people must be able to pursue their own conceptions of a good life freely, regardless of where they live, and we owe that to each other. Arranging the conditions for the pursuit of a good life is not a requirement of partial justice, which is applied only within a particular society, but rather a requirement of global justice, which is applied universally. These duties of global justice are supplemented by the idea of remedial responsibilities. For Brock, “those in developed countries have a significantly greater share of remedial responsibilities associated with reducing global injustice” (ibid.: 29).

Blake also admits that developed countries have a duty to correct injustice within the existing global socioeconomic order. However, the authors disagree on “whether skilled citizens from *developing* countries should also be expected to play a special part in discharging these responsibilities and mitigating losses” (ibid.: 30, *italics added*). Why, then, Brock asks, should talented people in developing countries bear this burden? She provides two main reasons; one of them is empirical, and the other is normative.

(i) Empirical perspective

From an empirical point of view, developing countries suffer great losses from the outflow of skilled workers. According to Brock, for developing countries, the departure of talented people may give rise to the following four effects (Brock and Blake 2015: 38-41). First, it leads to negative fiscal consequences. Skilled individuals often earn a high income, so they contribute to the government’s finances by paying more in taxes than other people. Therefore, the outflow of highly skilled workers is directly linked to the decline in tax revenues, which leads to shrinking public services. Second, the exit of talented workers makes it impossible to expect innovation, which will result in the long-term stagnation of the economy and a decline in the national income. Third, the knowledge possessed by highly skilled workers cannot be expected to spread to other people in the society, so the levels of technology and knowledge stagnate.

Fourth, and this is the most important reason for Brock, is that the outflow of skilled individuals means the outflow of “elites” who maintain and support existing institutions and create new ones if necessary. Let me give an example of Japan’s

Meiji Restoration in the mid-nineteenth century. The Meiji Restoration involved the transformation of the state from a medieval feudal system to a modern nation-state. The people who played major roles in nation-building in the early Meiji period were the young men who studied in Western countries and came back with knowledge about modern constitutional regimes. The institutional framework of modern nation-states, such as constitutions, the bureaucracy system, the parliamentary system, military organizations, education and public health care systems, was rapidly constructed based on the knowledge they had gained in the West. If those who had studied in the West had never come back, the modernization of Japan might have been delayed considerably, and Japan might have been colonized by Western countries.⁴⁾ Therefore, what is important for Brock is that “skilled workers have an important role to play in helping states to be effective” (ibid.: 31). However, their exit makes state-building difficult. As Brock says,

Creating better institutions is a significant component in helping people out of poverty and a key factor in promoting development . . . one of the most worrisome setbacks developing countries suffer from emigration is damage to institutions and institution building, and therefore a loss in opportunities for development and escape from poverty (ibid.: 37).⁵⁾

(ii) Normative perspective

The outflow of skilled individuals is also normatively problematic. Brock cites a number of reasons, but she especially emphasizes the following three (ibid.: 65-68). Firstly, there is the requirement of reciprocity. As mentioned above, Brock argues that major social institutions must be just and that people have an obligation to support such institutions. Major social intuitions determine the fair distribution of profits and burdens raised from social collaboration, and thus what is known as “free-riding” is not allowed from the viewpoint of “reciprocity.” Skilled workers enjoy some benefits from social collaboration. For instance, they are able to acquire skills and knowledge by receiving a specific professional education, but this education is provided by the state, either directly or indirectly. In fact, in many African countries, health care workers are trained at public educational institutions, and

4) In the case of the United States in the early twentieth century, Kapur and McHale point out the same thing (see Kapur and McHale 2005: 108-109).

5) However, according to Brock, it is not clear whether brain drain always results in these negative consequences. Therefore, she admits that her arguments are conditional ones. That is, she asks, “*when there are relevant losses that accompany high-skill migration*, what may governments from poor developing countries do about such losses?” (Brock and Blake 2015: 43, italics added).

nearly all of the costs related to human resource development are borne by the state (see Dolvo and Nyongator 2003). Therefore, they should bear the appropriate responsibilities. Some may have mastered professional knowledge and skills at private schools, but even so, it is the state they belong to that provides social order, security, and infrastructure so that they can safely go to school. It can be said that people get such benefits from the state. Therefore, skilled workers should accept certain burdens.⁶⁾

Related to that, there is also the requirement to not create disadvantages. The exit of talented people has an adverse effect on the people left behind. For example, as stated earlier, skilled individuals often contribute greatly to the state through their taxes. If the state's financial situation worsens due to emigration, public services will have to be reduced. Therefore, their emigration can directly relate to a decline in the quality of education, medical care, and other public services. In order to maintain the current public services, it is necessary to, for instance, drastically raise taxes, which is a big burden for the people left behind. Brock argues as follows:

The departing individual therefore imposes burdens on those left behind and as a beneficiary of the community's public resources, hospitality, nurturance, and protection, she has a duty to address the loss she has created for the community that helped her become the person she now is. Notably, one who has been educated to a sufficiently high level that she is able to take up well-paying opportunities in a global employment market. She has typically received a range of benefits and therefore has incurred some relevant duties (Brock and Blake 2015: 63).

Finally, states expect a fair return on investment. For example, having a professional education at a public school means that the state has invested scarce resources in fostering human capital. Thus states rightfully expect an appropriate reward for their investments. More specifically, if people graduate from the medical school of a public university, states would be able to justly expect that they would become doctors and contribute to providing medical care to people in the society. Then, if they cannot gain a return on their investments, states can demand compensation for them. For Brock, skilled individuals do not appear spontaneously but are raised through the proper investment of resources by states. So it is morally undesirable for skilled workers to emigrate without using their knowledge and techniques for the good of

6) As Brock says, "each of us gains from general compliance with state laws that guarantee peace and security. A certain amount of state coercion of its residents is justified when this is necessary to ensure the peace and security from which we benefit. We also have to be willing to do our fair share in providing key public goods" (ibid.: 63-64).

the society where they were raised. Therefore, if they wish to leave their home, states can demand compensation corresponding to the profits they gain.

(iii) Proposed solutions for brain drain

Brock argues that the liberal perspective justifies states imposing on skilled people who want to emigrate (a) certain taxes and (b) some programs of compulsory services.

First, according to Brock, it is legitimate to impose “emigration taxes” on talented people who wish to leave in order to compensate for the large loss caused by their departure. In addition, for Brock, it is legitimate to require that such taxes be paid even by host countries of the emigrants, because the countries, though they have paid no cost to nurture that personnel, gain a great benefit from accepting them. This implies that developed countries indirectly harm developing ones. Developed countries should hold a greater share of the remedial responsibilities associated with reducing global injustice. Therefore, it is legitimate to require some compensation from the host countries. Importantly, however, she insists that it is impermissible to impose unreasonable costs on those who will be expected to pay the tax.⁷⁾

Imposing compulsory services is much more controversial than taxation. Compulsory service is when states require people to engage in specific services at a certain place for a certain period in order to complete their course of study (ibid.: 48-49).⁸⁾ Those who received an education at a medical school, for example, need to engage in medical care services at places designated by the state – in many cases, in the remote countryside, where medical services are scarce – for a certain period in order to complete their course of study. It can be legitimate to impose such a program on them, because they accept some benefits from the “public goods” generated through social cooperation.

Therefore, someone who accepts government funding for tertiary education, such as in the case of accepting a scholarship, or takes out a government loan to fund their tertiary education should be required to complete a short period of compulsory service. This is uncontroversial and morally permissible. The problem is whether it can extend to “those who enroll in private colleges and who pay tuition costs themselves” (ibid.: 75). It may be somewhat controversial, but Brock argues it is reasonable to impose compulsory services on fully self-funded people for the

7) As for reasonable taxation programs, Brock assumes something like the “Bhagwati tax,” which famous economist Jagdish Bhagwati suggested in the 1970s (Brock and Blake 2015: 52, 73). For detailed arguments on the “Bhagwati tax,” see Bhagwati and Partington (1976) and Bhagwati and Wilson (1989).

8) For empirical investigations on compulsory service programs, see, for example, Frehywot *et al.* (2010).

completion of their course of study, because “even in the case of those who do self-fund, their training is still *heavily subsidized* by the state in both direct and indirect ways” (ibid.: 76, italics in the original). They indeed may pay their tuition fees themselves, but the full cost of training cannot be covered by tuition fees alone. Private universities receive many subsidies from the state so that they can purchase equipment and instruments for various experiments. Moreover, it is also the state that prepares the basic background conditions – keeping the peace, maintaining a reliable infrastructure, and delivering effective public transportation – thus enabling people to focus on acquiring skills comfortably. That is, even without accepting direct financial support, people have already received indirect assistance from the state in many cases. Therefore, it is reasonable to impose compulsory services on those who wish to leave their countries from the perspective of compensating the state.⁹⁾

2. Blake’s Arguments

Let us now turn to Blake’s arguments. According to him, the right to leave is “a basic liberal right” (ibid.: 191), so its restriction by the state cannot be permitted from a liberal point of view. Here is the passage that summarizes his arguments.

What I want to defend, though, is the idea that all humans have a basic right to leave any country, including their own, and to form new political relationships with contesting other states. This basic proposition makes any attempt by a state to forcibly prevent people from leaving that state – to coercively insist upon allegiance and obligation, against the wishes of the would-be emigrant – fundamentally unjust, and a violation of the most basic norms of human rights. I therefore believe that we are severely limited in how we may legitimately deal with issues arising under the broad heading of “brain drain.” States are not, most importantly, permitted to use coercive force to insist that their own citizens continue to reside within their borders (ibid.: 111-112).

We can confirm here that Blake, like Brock, does not assert that the right to free movement is absolute. However, according to Blake, we cannot “take away the freedom of movement from individuals *in the name of distributive justice*” (ibid.: 115, italics added). He, like Brock, provides mainly empirical and normative reasons for believing so.

9) There is also the problem of the compulsory service programs’ duration. Brock argues that it is reasonable to impose the programs for one to two years, but it may be unreasonable to impose them for much longer (see Brock and Blake 2015: 77).

(i) Empirical perspective

Blake says that theorists like Brock, who state that certain kinds of state restriction on the right to exit are legitimate, often pay attention only to the negative consequences brought about by brain drain. Brock, as mentioned earlier, is concerned about the possibility of major social institutions being undermined by the emigration of skilled workers. However, there are two sides to every coin. For Blake, “there may be bad things in the world that are necessary parts of things we rightly prize – in the case of both heartbreak and migration, a particular vision of human freedom” (ibid.: 117). Therefore, we need to carefully assess whether brain drain really produces only negative consequences. Blake argues that the exit of skilled workers is indeed troublesome for the countries of origin, but these exits provide some positive consequences that mitigate the bad effects they produce. He refers to Kapur and McHale (2005) and points out three possible advantages of brain drain (Brock and Blake 2015: 160-165).

In the beginning, even when leaving their countries, people do not completely lose their connection to the motherland. Those who go abroad can make use of their knowledge and social status and become intermediaries connecting their home countries with other societies. Kapur and McHale call such emigrants “reputational intermediaries” and state that they provide their countries of origin with “diaspora effects” (Kapur and McHale 2005: 116-125). For example, they can encourage trade between societies in not only commercial products but also human capital and knowledge. Facilitating these kinds of exchange among societies leads to increased economic growth and opportunities, foreign investment, and human development in the home countries. Moreover, what is important is remittances.

According to recent data from the World Bank,¹⁰⁾ the number of migrants across borders has been increasing since the 1990s, and therefore the amount of overseas remittances has also been increasing, reaching 573.286 billion dollars in 2017. In a number of developing countries, a significant portion of the national income is generated by remittances. For example, in countries like Tonga, Kyrgyzstan, Nepal, and Haiti, the ratio of overseas remittances to GDP is about 30 per cent or so. Hence, in many developing countries, it is difficult to develop and thrive, let alone to provide sufficient public services. As Blake argues, “remittances cannot do everything, but we should not therefore take them to do nothing – and to reduce the incentives to individuals to develop scarce skills by making it more difficult for them to use those abroad and earn greater wealth, is to run the risk of destroying one of the channels through which money flows into impoverished societies” (Brock and Blake 2015: 164).¹¹⁾

10) See <https://data.worldbank.org/indicator> (last accessed 22 October 2018).

11) Brock also admits that remittances are quite important for national income in developing ↗

The second expected effect of emigration is that it increases prospective migration. If people notice that acquiring knowledge and skills through education can give them much wider opportunities and possibilities, it becomes a great incentive for pursuing education. Regardless of whether they can actually move away from their country, the motivation for emigration will lead to an increase in people's education level and eventually to the development of the country. Therefore, the possibility of emigration should not be closed off.

Thirdly, when people leave their country of origin, they often tend not to stay abroad forever. According to Kapur and McHale (2005: 170-171), 30-40 per cent of emigrants eventually return to their home countries. The fact that those who leave their home countries come back is extremely important for the sending countries, because emigrants originally had high levels of knowledge and skills, and moreover, it is expected that they will have mastered new knowledge and skills in the country in which they have been living. Therefore, they "may help build new institutions in their societies of origin" (Brock and Blake 2015: 164) by making use of their knowledge and experiences. Conversely, preventing emigration will reduce the opportunities for major social institutions in developing countries to be refined.

As mentioned in the previous section, Brock argues that the right to leave is conditional, because brain drain has some negative effects on major social institutions in developing countries. For Blake, however, just as much empirical research shows that emigrants sometimes provide positive effects for their countries of origin, and thus, at least from the empirical perspective, the grounds to restrict emigration are weakened.

(ii) Normative perspective

In addition to these empirical standpoints, emigration restriction is normatively problematic from a liberal perspective. According to Blake, there are at least two types of arguments as to why the exit of skilled individuals should be restricted. They are both related to how major social institutions should be. One argument is based on distributive fairness, while the other is based on certain kinds of commonality.

As Rawls said, major social institutions should fairly distribute the benefits and burdens that social cooperation creates. This is what justice requires. If so, the same thing should be applied to the global distribution of human capital. In other words, "justice requires a concern for fairness in the division of the advantages and disadvantages of the creation, use, and allocation of human capital resources" (ibid.:

↘ countries, but she is suspicious about remittances really catalysing and supporting good institution state-building (see Brock and Blake 2015: 44-45; see also Wolff 2013: 110).

122).

Global inequalities are related to the unfair distribution of human capital. This is a problem within the global economic structure, and it must be corrected. According to Blake, however, some assert that the global poor have a right to expect a reasonable return on their investment that gives rise to the human capital of the skilled individuals who wish to leave their countries. For example, Kieran Oberman insists that educated workers have an obligation of repayment so as “not to make their compatriots worse off than they would have been had the skilled workers never been trained” (Oberman 2013: 435). From this standpoint, “[d]istributive justice requires that the benefits of this investment flow to the impoverished societies that made the investment rather than the already wealthy societies to which emigration is sought. Those societies that are poorly developed, then, have the right to maintain the human capital that arises and is developed within their borders. They are therefore permitted to use coercion to prevent high-talent individuals from exercising their purported right to leave” (Brock and Blake 2015: 122-123).

But for Blake, these arguments are incorrect for at least two reasons. First of all, what is unequal is not directly unjust. For example, the distribution of natural talents and physical attractiveness is, in a sense, arbitrary. However, it is not immediately unjust. Whether inequalities in this sense are a matter of justice depends not on the inequalities themselves but on the consequences they produce. If physical appearance, for instance, is directly connected to people’s freedom of occupation, it could be a matter of justice. Hence, the unfair distribution of human resources is not, in itself, immediately unjust.

The second reason, which is much more important, is related to one of the core values of liberalism: individual autonomy. For Blake, we indeed have an obligation to correct the huge global inequalities between developing countries and developed ones. That is definitely a matter of justice. However, “[f]rom the fact that a goal is required of us by justice, after all, does not mean that any and all moves toward that goal are morally praiseworthy” (ibid.: 128).

Here, we need to look at the core value to which liberalism is committed. Liberalism is committed to the value of individual autonomy and puts value on each person having the freedom to pursue her own conception of a good life. Therefore, her talent and resources should first be used for herself. From this point of view, do the global poor have a right to expect a reasonable return on their investments that give rise to the human capital of skilled workers who wish to leave their countries?

First of all, “rightful expectation” does not entail forcing a person to satisfy our expectations. For example, even if impoverished parents who can ill afford tuition fees manage to send their child to medical school, he may eventually become a musician instead. In this case, many people may say the child wronged his parents, but

they would probably not think it right for the parents to force him to be a doctor, or otherwise require him to repay them in full. Each of us has the right to pursue our own conception of a good life. Therefore, states committed to liberalism cannot force things on people. So saying that we can have a rightful expectation that talented people owe some duties to their societies comes close to saying that “the talented are *themselves* a resource subject to collective ownership” (ibid.: 134, italics in the original). Such states cannot be liberal. For Blake, “we do not have the right to sacrifice individual people in the name of this obligation, simply because they happen to be convenient means by which we might get closer to justice” (ibid.: 135).

Let us move on to an argument that is based on certain kinds of commonality. It says that “[t]hose individuals who grow within – and whose talents are developed within – a particular community have duties to preserve and promote that particular community” (ibid.: 123). According to Blake, however, this has at least two variations depending on the type of community: the former is communities based on national cultural identity, and the latter is communities based on civic political identity.

Some insist that a person owes debts to the society she belongs to, because she is a member of the community, shares a communal cultural identity with other members of the community, and lives a life within such social contexts and relations. According to Alasdair MacIntyre,

We all approach our own our circumstances as bearers of a particular social identity. I am someone’s son or daughter, someone else’s cousin or uncle; I am a citizen of this or that city, a member of this guild or that profession; I belong to this clan, this tribe, this nation. Hence what is good for me has to be good for one who inhabits these roles. As such, I inherit from the past of my family, my city, my tribe, my nation, a variety of debts, inheritances, rightful expectations and obligations. These constitute the given of my life, my moral starting point. This is in part what gives my life its own moral particularity (MacIntyre 1981: 204-205).

What is important is the debts the person owes; they are “special” obligations that the individual has to her fellow members. As Ronald Dworkin says, it is the obligations that “social practice attaches to membership in some biological or social group, like the responsibilities of family or friends or neighbors,” and he calls them “associative communal obligations” (Dworkin 1986: 195-196).¹²⁾ Hence, from this

12) Dworkin also calls the obligations “fraternal” obligations (Dworkin 1986: 198-199).

perspective, emigrants who are raised and nurtured by the community are violating their associative obligations toward their fellow citizens. Then “that community, in turn, would have some right to prevent their leaving in the first place” (Brock and Blake 2015: 139).

However, for Blake, it is suspicious that associative obligations can justify a state’s choice to prohibit emigration, because in the arguments on associative obligations, advocates often confuse “having obligations” and “feeling to have obligations” (Brock and Blake 2015: 141-142; see also Simmons 1996). Therefore, for an emigrant, though she may feel that she owes a duty to her fellow citizens, Blake argues that “it is best understood as a duty of virtue rather than as an enforceable duty of politics” (Brock and Blake 2015: 141).¹³⁾

The arguments on associative obligation have a somewhat “communitarian” flavour, but commonality is understood as a much more liberal perspective – it is a “political loyalty” (Stilz 2009). Political loyalty is loyalty that is not based on ascriptive cultural identity but is mediated by shared political institutions. Stilz’s argument is derived from Rawls’s “natural duty of justice.” According to him,

From the standpoint of justice as fairness, a fundamental natural duty is the duty of justice. This duty requires us to support and to comply with just institutions that exist and apply to us, it also constrains us to further just arrangements not yet established, at least when this can be done without too much cost to ourselves (Rawls 1999: 99).

According to Stilz, the natural duty of justice is the “institutionally mediated duty,” and background institutions define what kinds of duty people have and assign them fairly. Hence, whether people can abandon their obligations to their compatriots depends on what kinds of duty are allocated by the institutions. So it is difficult to admit that the right to leave can be absolutely justified. The only thing we can say is that the conditions of the exit are subject to the constraints imposed by the fair distributive obligations prescribed by the major social institutions. In this way, Stilz asserts that the right to exit can justly be restricted on the grounds of the natural duty of justice (Stilz 2016: 71-75).

However, arguments based on the natural duty of justice have some flaws. What is especially critical is that the arguments cannot satisfy the “particularity requirement,” which is a moral requirement “which binds an individual to one *par-*

13) Christopher Wellman also argues that associative bonds cannot constitute political duties but rather relate to moral evaluations of persons – that is, “virtue ethics” (see Wellman 1997).

particular political community, set of political institutions, etc.” (Simmons 1979: 31, italics in the original). In principle, natural duties are “owed not only to definite individuals, say to those cooperating together in a particular social arrangement, but to persons generally” (Rawls 1999: 99). Political obligations, however, are usually particular ones that people owe to the society to which they belong. If so, given that there are societies A and B, both of which have just institutions from the perspective of the natural duty of justice, it is impossible to show clear reasons why citizens of A have to support just institution A, to which they belong, rather than just institution B. Therefore, as Blake points out, “the natural duty to support just institutions does not itself tell us anything about which institutions we are obliged to support” (Brock and Blake 2015: 146). Therefore, it is difficult to justify the state’s restriction of the right to leave on the grounds of the natural duty of justice.

III. Evaluation: Can We Justify Emigration Restriction?

There is no major difference between Brock and Blake in their approach to freedom of movement. Both assert that the right to free movement is a fundamental human right, so it is wrong to constrain it. In other words, from their point of view, liberal states basically cannot restrict people’s right to leave. However, both also acknowledge that freedom of movement is not an absolute right to be protected at all times and occasions. In other words, they assert that freedom of movement is occasionally constrained, and certain global justice demands can be a *pro tanto* reason to justify the restriction. In particular, both Brock and Blake state that it is acceptable to impose some taxation on those who wish to emigrate as a measure in response to brain drain (although Blake is more reluctant than Brock).¹⁴⁾

One of the points of dispute between the two philosophers concerns the justification of compulsory service programs. This refers to whether the state can force would-be emigrants to remain in their home countries, even if it is for a short period of time. Brock argues, just like Stiliz, that the natural duty of justice – that is, the obligation to maintain and support just institutions – can justify the imposition of compulsory service programs. However, the crucial disadvantage of Brock’s argument is

14) In addition to that, Blake accepts imposing on would-be emigrants “something like” compulsory service programs only in “emergency circumstances,” that is, to “make educational provision contingent upon the signing a contract” to provide medical services in rural areas for some particular length of time (Brock and Blake 2015: 214-217). I think this could be one of the reasonable and permissible solutions, because it is based on their spontaneous consent. Then, However, how to define “emergency” is quite controversial. Regarding this point, Eszter Kollar argues against Blake’s definition of emergency circumstances (see *ibid.*: 209-214, Kollar 2017).

that it cannot meet the “particularity requirement.” As she fails to explain why people have an obligation to the society to which they belong, her arguments seem to be vulnerable. In order to overcome these difficulties, I think it is necessary to appeal to arguments on associative obligations, but Brock cannot, because she occupies a cosmopolitan liberal position (see *ibid.*: 26-27; see also Brock 2009).¹⁵⁾

Speaking from a broader perspective, the difference between their perceptions of restrictions on the right to leave represents their different interpretations of liberalism – that is, whether liberalism should focus on justice or individual autonomy. Brock emphasizes the requirement of justice, which means that it can be legitimate grounds to constrain individual autonomy, because liberalism indeed puts an emphasis on individual autonomy, but liberalism also requires that every individual is able to enjoy autonomy equally. However, to recall Rawls’ criticism of utilitarianism, an important element of liberalism is ensuring that individuals are not oppressed by group intentions. Using a Kantian phrase, it is important to treat persons not as purposes but also as agents. From this perspective, to keep highly skilled individuals in their home countries, even for a short period, it would be best to treat them as useful tools for the development and prosperity of societies. However, of course, human beings are not tools; therefore, liberal states seem to be unable to restrict people’s fundamental right to emigrate legitimately. According to Blake, “the justification is made to the individual herself, conceived of as a creature with her own motivations, her own interests, and a non-infinite capacity for altruism” (Brock and Blake 2015: 205).

IV. Conclusion: How to Respond to Brain Drain

So how do we respond to brain drain? I want to point out two things. It is clear from the philosophical debates between Brock and Blake on the state’s restriction of the right to leave that liberal states cannot coercively constrain people’s right to exit. However, brain drain does have negative effects on the sending countries, and we must at least mitigate the losses. Therefore, imposing emigration taxes on skilled workers who wish to emigrate should be permitted as an urgent measure.¹⁶⁾

15) Both Brock and Blake deny justifying the state’s restrictions on the right to leave based on certain fellow feelings, and Jeremy Snyder argues against them by introducing an argument for a certain kind of communal solidarity (see Snyder 2017). In addition, Thaddeus Metz and Abraham Olivier criticize them, referring to a “communitarian” tradition in African philosophy (see Metz 2017 and Olivier 2017). On my brief evaluation of arguments emphasizing communal solidarity, see Shirakawa (2019).

16) However, as Michael Clemens (2014) and Javier Hidalgo (2017) point out, it is still not clear whether restricting skilled migration can promote prosperity and reduce deprivation in developing countries.

From this perspective, it is important for theorists to suggest some conceptions of a “global tax” in relation to an appropriate conception of “global governance.”

In addition to that, as a normative approach to brain drain, instead of securing or restricting the right to free movement, it may be necessary to introduce a guarantee of the “right to remain/stay,” which would lead to reconsidering what “freedom of movement” really means. “Freedom of movement” usually means to be able to “move” from A to B freely. Thereby, when restricting it, the right to “leave” from A and the right to “enter” B become problematic. However, does the right to free movement really mean only the right to move from one place to another? Probably not.

Indeed, freedom of movement may include the “freedom not to move.” It includes the right to “remain” within A, on the premise that the individual’s right to move from A to B is secured. If the person cannot choose to stay, then she is actually forced to move. If so, “freedom of movement” should be understood as free choice to move or not, on the premise that the right to remain is secured (see also Oberman 2011).

Brain drain is caused by poor wages, a lack of opportunities in a society, and poor living conditions; therefore, people often have no choice other than to leave, even if they do not want to. In this way, their “freedom to remain in their motherland” is infringed upon, as they cannot enjoy the right to free movement in the sense that they have to seek better opportunities abroad because of severe poverty. Therefore, what is of primary importance is correcting the global socioeconomic structures that create situations where some people inevitably move abroad. The duties of global justice, in my view, must be considered from such a perspective.

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